IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 31ST MAY 2007 / 10TH JYAISHTA 1929

MFA.No. 199 of 2000

OPMV.441/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR
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APPELLANT/CLAIMANT:

BALAN, S/O APPUNNY, PULIKKAL
HOUSE, P.O.AVANOOR, VARADIAM,
TRICHUR DISTRICT.

BY ADV. SRI.K.S.BABU
SMT.N.SUDHA

RESPONDENTS/RESPONDENTS:

1. KUMARAN, S/O NANU EZHUTHASSAN,
VATTAPARAMBIL HOUSE, P.O.AVANUR,
VARADIAM, TRICHUR DISTRICT.

2. SASI, S/O KUMARAN, DO. DO.

3. ORIENTAL INSURANCE CO. LTD., TRICHUR.

4. V.K.SAKTHAN, VAKAYIL HOUSE,
POOTHOLE, THRISSUR.

R1 & R2 BY ADV. SRI.P.K.ASHOKAN
R3 BY SC SRI.P.V.JYOTHI PRASAD

THIS MISC. FIRST APPEAL HAVING COME UP FOR ADMISSION ON 31/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No. 199 of 2000

JUDGMENT

Koshy, J.

The appellant/claimant met with an accident and suffered serious injuries due to the negligence of the driver of the vehicle insured by the third respondent Insurance company. He claimed a compensation of Rupees four lakhs. The Tribunal awarded a total compensation of Rs.51,000/- only. Aggrieved by the quantum of compensation, this appeal was filed.

2. According to the petitioner, he was working in Gulf as a manual labourer in a construction company. He was earning 2750 Quatar Riyals equal to Rupees twenty thousand. It is also explained that he was on employment under two years contract and after the expiry of the first contract, he came back and the accident occurred during that time.

Further he was having an A4 contract, which is a renewal contract. He can go back and join duty for another period of two years. Exhibit A10 is the certificate. The accident occurred on 5.1.1995. He went back only in May, 1998, as could be seen from the passport and certificate produced by the petitioner, the Tribunal found that since the period of contract was over at the time of accident he was unemployed. He sustained comminuted fracture to his right patella and fracture to the distal phalanx of right index finger. Patellotomy was done. He was admitted in the hospital on 5.1.1995 and was discharged on 18.1.1995. Again he was admitted on 13.2.1995 and was discharged on 17.2.1995. Considering the above injuries and operations done, the The Tribunal was of the opinion that for three months he was entitled to Rupees ten thousand for loss of amenities. As far as disability is concerned, even though the

petitioner produced a medical certificate showing 20% disability, the Tribunal did not award any amount for the same. The accident occurred in 1995. He went back to Quatar only in 1998 and worked there as a manual labourer for about eight months. The Tribunal came to the conclusion that if there was permanent disability, he would not have gone back and worked as a manual labourer. Even though the petitioner produced the termination letter, the Tribunal did not accept the same, as it was not issued by the employer. The doctor, who issued the disability certificate, was not examined. In these circumstances, the Tribunal held that there was no permanent disability and if there was permanent disability, he would not have gone back to Quatar and worked there as a manual labourer. Yet, the Tribunal awarded Rupees twenty thousand as compensation for continuing discomfort, etc.

3. The major ground of dispute is that no amount was awarded for loss of earning capacity or for loss of earnings. According to the appellant, since he was having a renewal contract, he would have returned to Quatar within a reasonable time, but for the accident. In any event, because of the injuries and fracture, he was unable to do any work for some time. We are of the view that Rupees ten thousand should be awarded for loss of earnings. No amount was awarded for transportation. Therefore, we are of the view that Rupees one thousand should be awarded on that count. Considering th totality of the evidence, we are of the opinion that no further enhancement is required. Therefore, we direct the Insurance Company to deposit Rs.11,000/- over and above the decreed amount with 8% interest from the date of application till date of deposit within three months from the date of receipt of a copy of this judgment. On deposit of the amount,

the appellant is free to withdraw the same.

The appeal is allowed to the above extent.

(J.B.Koshy, Judge)

31st May, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No.199 of 2000

JUDGMENT

31st May, 2007